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HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 594 of 2004

Oriental Insurance Company Ltd., Bilaspur

Versus

Tameshwar Sahu

POST FOR JUDGMENT ON 9th May, 2007

Sd/-
DHIRENDRA MISHRA
Judge

(19)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. NO. 594 OF 2004

APPELLANT Defendant		Oriental Insurance Company Ltd., Dhamtari, Through its Divisional Manager, High Court Road, Bilaspur(C.G.)
	Versus	
RESPONDENT		Tameshwar Sahu, 45 y ears, S/o Kashi Ram Sahu, R/o Village Amadi, Tahsil and District Dhamtari (C.G.)

Present:

Mr. Sankalp Jaiswal, Advocate for the appellant.

None for the respondent.

J U D G M E N T

(Delivered on /1 /05/2007)

Dhirendra Mishra, J

1) The appellant-Insurer has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') against the award dated 8th March, 2004 passed by the Additional Motor Accident Claims Tribunal, Dhamtari in Claim Case No.173/03 whereby an award for a sum of Rs.91,000/- has been passed in favour of the claimant/respondent herein for the injuries sustained by him on 24.11.2001 due to accident caused by vehicle No. MP23-G-3116 driven & owned by respondent himself.

2) The application of the claimant, in short, is that on 24.11.2001 he was proceeding from Raipur to Dhamtari by his jeep/taxi, when he reached near Sankala road in the highway his jeep dashed against a truck parked beside the road. His vehicle was totally damaged and he also sustained grievous injuries. The passengers in the jeep also sustained injuries and with this averment he claimed a sum of Rs.13,95,000/- for various injuries sustained by him. It was also claimed that he was duly licensed to drive the vehicle and the vehicle was insured by the appellant herein for the relevant period. The

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appellant is also insurer of the applicant and there was a personal insurance bearing policy No.2001/141 valid for the period from 8.3.2001 to 7.3.2002.

3) The appellant insurance company denied the claim and specifically pleaded that the vehicle in question was insured for coverage of risk of 3rd party, no additional premium was paid by the applicant for coverage of self damage and he did not possess the valid license for driving public transport vehicle. The driver, owner and insurer of truck No. M.B.Y 8070 was necessary parties and for non-joinder of necessary parties, the petition deserves to be dismissed.

4) The tribunal by the impugned award rejected the objections raised by the appellant herein with a finding that the application is under Section 163(a) of the Act in which the claimant is only required to prove that he sustained injuries in the accident resulting permanent disability. The claimant was not required to prove the negligence, as the claim is based on no fault liability. With regard to the objection that the claim petition at the instance of owner insured was not maintainable, it has been held that since the respondent was insured by the appellant for his personal accident also for the relevant period, therefore, the appellant herein is liable to pay the assessed compensation. It has been further held that the onus of proving that the driver was not having valid driving license lies upon the insurance company and since no evidence has been led by the insurance company in this regard and applicant has filed the driving as Ex.P-16C, therefore, it is not proved that the claimant was driving the vehicle in contravention of the conditions of insurance policy.

5) Learned counsel for the appellant submits that admittedly the application has been preferred by the owner/insured of the vehicle, therefore, as per Section 147 (b) of the Act no such liability can be fastened upon the insurer for indemnifying the owner insured himself, as he cannot be termed as 3rd party because the jurisdiction of the tribunal was confined to a 3rd party claim only. So

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far as the claim of the respondent based on his individual personal accident policy of Ex.P-15 is concerned, the above policy does not entitled the respondent to file a petition under Section 163 of the Act and claim arising out of the policy of Ex.P-15 could not be adjudicated by the claims tribunal. Reliance is placed in the matter of **Oriental Insurance Company Co. Ltd. Vs. Smt. Jhuma Saha & ors** reported in **AIR 2007 SC 1054** & judgment of Division Bench of this Court in **M.A.[c] No.159/2007** between **Smt. Urmila Bai and others Vs. Policy Issuing Office.**

6) I have heard learned counsel for the respective parties and perused the material available on record.

7) It is admitted position that the vehicle involved in question was insured by the appellant for 3rd party risk.

8) In the matter of Smt. Jhuma Saha (supra) it has been held that where insured owner of motor vehicle himself got injured due to his own negligent driving, insurer is not liable to pay compensation particularly when no additional premium has been paid in respect of entire risk of death or bodily injury of owner of vehicle. In Para 13 of this judgment it has been held that;

> "**13**. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147 (b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case."

9) Further in the matter of Smt. Urmila Bai (supra) the Division Bench of this Court placing reliance upon the judgment of **Dhanraj Vs. New India Assurance Co. Ltd. and another** reported in **(2004) 8 SCC 553** has held that since the deceased was the owner of vehicle, so far as third party risk is concerned, his legal representatives are

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not entitled to claim compensation in accordance with the provisions of the Act, 1988.

10) Now coming to the fact that respondent had also insured himself with the appellant for his personal accident through a separate policy of Ex.P-15 to the tune of Rs.1 Lac. In my opinion, the personal accident policy of Ex.P-15 gives the claimant a separate cause of action against the insurer and that cannot be considered in a petition under Section 163 (a) of the Act, which has been filed on the ground that the vehicle causing accident was insured by the appellant for covering 3rd party risk. It is always open to the respondent to initiate appropriate proceedings against his insurer on the basis of policy of Ex.P-15 before appropriate forum.

11) In view of the aforesaid discussion the claim petition at the instance of the owner, who himself was driving the vehicle at the relevant time and met with an accident, against the insurer was not maintainable, particularly, when the policy did not cover his personal injuries for unlimited extent.

12) In the result, the impugned award fastening the liability on the appellant insurance company is hereby set aside and it is held that application of the respondent herein, who himself was driver, owner and insured, was not maintainable under the Act. However, It is made clear that this order shall not come into the way of the respondent in establishing his right to claim arising out of the insurance policy of Ex.P-15.

Sd/-
DHIRENDRA MISHRA
Judge

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